

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	13-1829
Introduction Date	8-14-13
Enactment Number	13-1551
Enactment Date	8/14/13 EA

# Memo

**To** Board of Education

**From** Tim White, Associate Superintendent

**Board Meeting Date** August 14, 2013

**Subject** **AGREEMENT WITH FINKBEINER AND ASSOCIATES**

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**Action Requested** Approval of Agreement between Oakland Unified School District and FINKBEINER AND ASSOCIATES

**Background**  
*A one paragraph explanation of why the consultant's services are needed.*

Finkbeiner and Associates of Orinda, CA is being retained to Facilities to assess the organizational structure of the Facilities Department, to develop a human resources strategic management and operational plan for the Facilities Department, and to align the structure with the District's Strategic Plan and to meet the requirements of the Board of Education Balanced Scorecard.

**Discussion**  
*One paragraph summary of the scope of work.*

The term of the agreement is August 1, 2013 to June 30, 2015 in an amount not to exceed \$45,000.

**Recommendation**

Approval Agreement between Oakland Unified School District and FINKBEINER AND ASSOCIATES, term from August 1, 2013 to June 30, 2015 in an amount not to exceed \$45,000.

**Fiscal Impact** Funding resource name: (GP) not to exceed \$45,000.

**Attachments**

- Professional Services Agreement

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**AGREEMENT**  
**Between**  
**OAKLAND UNIFIED SCHOOL DISTRICT and**  
**FINKBEINER AND ASSOCIATES**

**1. INTENT**

The Oakland Unified School District (hereinafter "the District" or "OUSD") hereby enters into a professional services agreement with FINKBEINER AND ASSOCIATES (hereinafter "CONSULTANT" or "CONTRACTOR") for the latter to assist the Associate Superintendent for Facilities in assessing the organizational structure of the Facilities Department, to develop a human resources strategic management and operational plan for the Facilities Department, and to align the structure with the District's Strategic Plan and meet the requirements of the Board of Education Balanced Scorecard.

**2. TERMS AND CONDITIONS**

**2.1 Term of Agreement.** The term of this agreement shall be August 1, 2013 to June 30, 2015 and may be extended by written agreement of both parties.

**2.2 Fees.** CONSULTANT'S fees for its services shall not exceed Forty-Five Thousand dollars (\$45,000.00). Subject to Section 5 below, Consultant shall be reimbursed separately for travel; telephone toll charges; express mail, messenger or delivery service for the term of this Agreement, provided that these cumulative out-of-pocket costs do not exceed Five Hundred Dollars (\$500.00).

**2.3 Simultaneous Services by Consultant to Other Clients.** The District acknowledges its understanding that Consultant is actively involved in furnishing services similar to those provided by this contract for other clients. Consultant shall not be limited in any way in performing services for other clients that do not prevent it from discharging its obligations under this Agreement.

**2.4 Due Diligence and Lack of Warranty.** CONSULTANT shall exercise due diligence and its best efforts in performing the services required by this Agreement. Consultant makes no warranty, express or implied, as to the results of the services provided.

**2.5 Notice of Termination.** OUSD may at any time terminate this Agreement upon not less sixty (60) days written notice to CONSULTANT. OUSD shall compensate CONSULTANT for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this agreement for cause should CONSULTANT fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONSULTANT shall pay the additional cost. OUSD's right to terminate this Agreement is not its exclusive remedy but is in addition to all other remedies available to the OUSD by law, in equity, or under the provisions of this Agreement. Upon any

termination of this Agreement, CONSULTANT shall immediately provide OUSD with complete and accurate copies or originals - where appropriate - of all documents in its possession belonging to OUSD. CONSULTANT further agrees to do all other things reasonably necessary to cause an orderly transition of services without detriment to the rights of OUSD.

2.6 **Choice of Laws.** This Agreement is governed by the laws of the State of California.

2.7 **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

2.8 **Non-Discrimination.** Consistent with the policy of OUSD in connection with all work performed under this AGREEMENT, CONSULTANT shall not engage in unlawful discrimination in employment on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation. CONSULTANT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, CONSULTANT agrees to require like compliance by all of its subcontractor(s).

2.9 **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

### 3. AREAS OF AUTHORITY

3.1 **Independent Contractor.** This is not an employment contract. CONSULTANT, is an independent contractor or business entity, and will be responsible for operations and management of its employees to sufficiently carry out the agreed upon Scope of Work. CONSULTANT understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided or entitled to employees of OUSD, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONSULTANT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions necessary to do business in the State of California, including unemployment insurance, social security and income taxes with respect to CONSULTANT's employees. In the performance of the work herein contemplated, CONSULTANT is an independent contractor, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

3.2 **No Rights in Third Parties.** This agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

3.3 **Ownership of Documents.** All documents created by CONSULTANT pursuant to this Agreement, including but not limited to reports, designs, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by CONSULTANT, are and shall be at the time of creation and thereafter the property of the OUSD, with all intellectual property rights therein vested in the OUSD at the time of creation.

The OUSD shall be entitled to access to and copies of these materials during the progress of the work. Any such materials in the hands of CONSULTANT or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to the OUSD. CONSULTANT may retain a copy of all materials produced under this Agreement for its use in its business activities.

**3.4 Copyright/Trademark/Patent/Ownership.** CONSULTANT understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD.

**3.5 Confidentiality.** The CONSULTANT and all CONSULTANT's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information and documents received that are labeled as confidential. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

#### **4. INDEMNIFICATION**

CONSULTANT shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of CONSULTANT or loss of or damage to property, arising directly or indirectly from CONSULTANT's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on CONSULTANT, its agents or employees. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

In addition to CONSULTANT's obligation to indemnify the District, CONSULTANT specifically acknowledges and agrees that CONSULTANT has an immediate and independent obligation to defend the District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to CONSULTANT by the District and continues at all times thereafter.

#### **5. BILLING**

a. Bills for CONSULTANT fees and expenses must be submitted monthly and within 30 days of the end of the billing period unless otherwise agreed. Bills or invoices should be addressed to:

Timothy White  
Oakland Unified School District  
[Timothy.White@ousd.k12.ca.us](mailto:Timothy.White@ousd.k12.ca.us)  
c/o tina.regueiferos@ousd.k12.ca.us

b. The District will not pay for amounts not reflected on bills or invoices.

c. The District will pay only the actual costs for reasonable expenses without any premiums or markups.

d. The District shall reimburse CONSULTANT for necessary photocopying and other expenses at cost, subject to the following limitation:

- i. Copying expense - 10¢ per page
- ii. Facsimile expense - 50¢ per page

e. The District retains the right to audit all bills or files that are or have been the subject matter of any billing in the past. Such an audit will require CONSULTANT to produce any and all documentation that would support the billing submitted by CONSULTANT. CONSULTANT will produce any individual who has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. CONSULTANT acknowledges that the District may utilize its own personnel, an outside auditing service, or such other company or service to perform such audits.

## **6. WAIVER**

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

## **7. MODIFICATION OF AGREEMENT**

The parties may amend this Agreement in writing by mutual consent. Changes, including any increase or decrease in the amount of the CONSULTANT's compensation, shall only be effective upon proper Board approval and execution of a duly authorized written amendment to this Agreement.

## **8. COMPLIANCE WITH LAWS**

CONSULTANT shall keep itself fully informed of the applicable state and federal law affecting the performance of this Agreement, including but not limited to any and all restrictions and requirements of the Lobbying Disclosure Act, and shall at all times comply with such laws as they may be amended from time to time.

## **9. SECTION HEADINGS**

The section headings contained herein are for convenience in reference and are not intended to define the scope of any provision of this Agreement.

## **10. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and supersedes all other oral or written provisions.

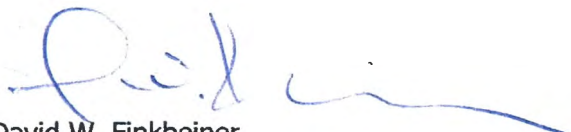
## **11. SEVERABILITY**

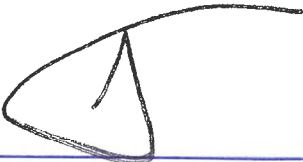
If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

**12. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary**

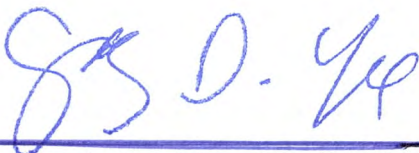
**Exclusion:** The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

IN WITNESS WHEREOF, the parties hereto agreed to be bound and have executed this Agreement on the day first mentioned above.

  
David W. Finkbeiner  
Managing Partner  
Finkbeiner and Associates

  
\_\_\_\_\_  
President, Board of Education  
Oakland Unified School District

8/15/13

  
\_\_\_\_\_  
Superintendent and Secretary Board of Education  
Oakland Unified School District

8/15/13

Approved as to Form

  
\_\_\_\_\_  
Jacqueline Minor, General Counsel

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